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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MANUEL ZHISPON,

Plaintiff,

-against-

STRONG CONSTRUCTION OF NEW YORK
NEW YORK CORP.,

Defendant.
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ORDER
15-CV-1475 (JFB)(GRB)

JOSEPH F. BIANCO, District Judge:

On February 22, 2018, Magistrate Judge Gary R. Brown issued a Report and Recommendation (the "R&R"), recommending that the Court deny the motion for damages filed by plaintiff Manuel Zhispon ("plaintiff"), but grant plaintiff leave to file a renewed motion for damages with the appropriate support. The R&R was served on defendant Strong Construction of New York Corp. ("defendant") on March 2, 2018. (ECF No. 19.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. The date for filing any objections has thus expired, and no party has filed an objection to the R&R. For the reasons set forth below, the Court adopts the R&R in its entirety, denies plaintiff's motion for damages, and grants plaintiff leave to submit a renewed motion for damages within forty-five (45) days of this Order.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); see also *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to

object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although no party has objected to the R&R, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for damages (ECF No. 18) is denied.

IT IS FURTHER ORDERED that plaintiff is granted leave to submit a renewed motion for damages within forty-five (45) days of this Order, by May 7, 2018.

IT IS FURTHER ORDERED that plaintiff shall serve a copy of this Order of defendant and file proof of service with the Court.

SO ORDERED.


JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 23, 2018
Central Islip, New York